Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1979

NO. 79-1186

ORVILLE E. DENNIS,
Petitioner

v.

SIDNEY SPARKS and R. L. LYND, d/b/a
SIDNEY SPARKS, TRUSTEE,
Respondents

REPLY OF RESPONDENTS TO PETITION OF ORVILLE E. DENNIS FOR WRIT OF CERTIORARI

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Respondents here support the en banc holding below, Sidney A. Sparks and R. L. Lynd, d/b/a Sidney A. Sparks, Trustee, vs. Duval County Ranch Company, Inc., et al, Fifth Cir., 1979, 604 F2d 976, as to the holding that private parties who conspire with a state judge in violation of 42 USC,

Section 1983, do not derive immunity from the co-conspiring judge who is held to be immune under the doctrine of judicial immunity. Respondents challenge that part of the en banc decision which accords immunity to the judge involved, as petitioners in No. 79-1239, Sidney A. Sparks and R. L. Lynd, d/b/a Sidney A. Sparks, Trustee, v. Duval County Ranch Company, Inc., Clinton Manges, Orville Dennis, Clarence Martens and O. P. Carrillo, Respondents. Since both petitions for review grow out of the same complaint below we presume the two will be considered together. Each petition has attached an appendix, containing relevant material. The appendix attached to the Dennis Petition will be herein cited as "Dennis App., p. __," and the appendix attached to the Sparks-Lynd Pe-

tition will be herein cited as "S-L App., p. __."

OPINIONS BELOW

Correctly stated and correctly included in the appendix to the Petition of Orville E. Dennis (hereafter "Dennis").

JURISDICTION

We do not contest this Court's jurisdiction as stated.

QUESTION PRESENTED FOR REVIEW

The Dennis Petition correctly states the question.

STATUTES INVOLVED

42 USC, Section 1983

> "§1983. Civil action for deprivation of rights
>
> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction

thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R.S. §1979.)"

Texas Constitution, Article XVI, Section 41

"§41. Bribery and acceptance of bribes

NOTE: This Constitutional provision appears in full in No. 79-1239, S-L App., p. 43a-44a and is not here repeated.

U.S. Constitution, Article II, Section 4.

"Section 4. Removal from office.

"The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Texas Constitution, Article XV, Section 6.

"§6. Judges of District Court: removal by Supreme Court

NOTE: This Constitutional provision appears in full in No. 79-1239, S-L App., p. 44a-45a, and is not here repeated.

Texas Constitution, Article V, Section 11.

"§11. Disqualification of judges; exchange of districts; holding court for other judges

"Sec. 11. No judge shall sit in any case wherein he may be interested," etc.

STATEMENT OF THE CASE

Except as reference may be made to undisputed matter, considered helpful in understanding this case, the statement as contained in the panel decision, 588 F2d 124 (Dennis App., p. A5-A10; and S-L App., p. 34a-39a), and the en banc decision, 604 F2d 976 (Dennis App., p. A11-A24; S-L App., p. 2a-16a), together with the partisan statements of petitioners in Nos. 79-1186 and 79-1239, adequately present the facts here involved.

REASONS FOR DENYING THE WRIT

Petitioner asserts (pages 7-17) that the en banc decision is against public policy:

First, that suits against private persons would raise issues of the judge's participation, actions and motives; second, the judge would be subject to discovery and pre-trial procedures; third, that the judge would be a witness; fourth, that disappointed litigants in state courts would flock to federal courts to retry their grievances; and fifth, that private persons would no longer seek aid of state judges because their acts in doing so might be a conspiracy from which they would not have immunity. These arguments are grounded on speculation that conspiracy law would be torn from its anchorage; that commitment of members of the Bar to their code of professional responsibility is fragile; and that judges are by the decision below shorn of their competence to deal with frivolous suits. We will answer under the num-

bers and general headings of Dennis' Petition:

I.

THE DECISION EN BANC OF THE COURT OF APPEALS IN DENYING DERIVATIVE IMMUNITY TO PRIVATE PARTIES WHO CONSPIRE WITH A STATE JUDGE IS NOT IN CONFLICT WITH SOUND PUBLIC POLICY, BUT IS CONSISTENT THEREWITH.

A. Public policy demands independent judges; but also, honest judges: Dennis' Petition notes the early enunciation of the doctrine of judicial immunity in 1608 (p. 9), at which time the dominant theory of government was the "divine right of kings." Centuries of war and civil strife have toppled monarchs who held on too long, while those who made reasonable concessions have survived. Judges have fared better.

The doctrine of judicial immunity, although judge made, has survived largely due to general excellence of those attorneys who have assumed judicial duties. Abuse has been sufficiently rare that the doctrine has never come under scrutiny of a groundswell of public clamor. Yet, when an individual judge is corrupted, his potential for evil is so great that to permit Sec. 1983 civil suit against those who corrupted him, is, we submit, a wholesome act of the judiciary disciplining itself. Reform should come through careful judicial surgery, not through protecting the corrupt judges and their co-conspirators until scandals bring reform by meat ax legislation.

The arguments of Dennis' Petition are completely answered by the en banc opinion, and will not be here discussed case by case.

Immunity is grounded as much on honesty and integrity as on independence. In fact, honesty and integrity are the end, and independence is only a means whereby the end is served. When a judge accepts a bribe, as here, integrity and independence of the judiciary go down together.

B. Inconvenience to judges is outweighed by sound policy considerations:

Dennis' second argument that judges would be diverted by "discovery procedures and pretrial practices" is fully answered by the en banc decision (Dennis App., p. A17, par. [7]; S-L App., p. 9a, par. [7]). The Court said:

> Sound policy suggests that attempts by such persons to subvert the judiciary should be penalized in every just way, civil as well as criminal. It suggests that the fullest redress that the judicial system can accommodate while functioning effectively should be granted for such odious wrongs. And it suggests that the actual

> incentive to corruption held out by the present doctrine, with its promise of civil immunity to those who succeed in involving a judge's powers in their nefarious schemes, should be removed.

The true public interest could hardly be better stated.

C. Availability to testify of all persons with relevant knowledge is essential to the judicial process: It seems incredible that we are here arguing whether a judge should be required to give testimony within his knowledge relevant to matters affecting integrity of the judicial process. As observed by the majority below the inconvenience to the judge is slight weighed against "the advantages gained by punishing those who subvert the judiciary." (Dennis App., p. A19; S-L App., p. 10a-11a). The public policy behind the doctrine of immunity is to preserve the independence of honorable jud-

ges, not to conceal the corruption of those who stray. The dissent (Dennis App., p. A37; S-L App., p. 29a) may have laid down a valid test to separate the good from the bad, in its reference to the "chilling effect of submission to discovery and the appearance as a witness." We submit that the honorable judge, who has conducted himself according to the Code of Judicial Conduct, even though he may have made an erroneous ruling, would feel no chilling effect from answering honestly any questions propounded to him. However, if he had accepted bribes from a litigant, or had held secret ex parte communications and reached unlawful accords with a litigant, then his dilemma of whether to (1) take the fifth; (2) tell the truth and expose himself; or (3) to add perjury to his offense and hope not to be caught, would indeed be chilling. It should be!

D. A flood of frivolous litigation will not follow: To open the Section 1983 gate wide enough to permit suit against a litigant who bribed a judge and others who conspired with him (where the fact of bribery is res judicata) to induce a corrupt judgment that takes plaintiff's property, is too narrow an opening to invite a flood of litigation against honorable judges.

This Court must, as the majority below did, base its judgment on the facts in this case alone. The Court may not ignore such facts and presume that we are dealing with an honest judge who made an honest mistake and is hauled into court under false and frivolous pleadings by a "jailhouse lawyer" bent on revenge.

The integrity and ethics of the legal profession have not so degenerated that at-

torneys in great numbers will rush to file false pleadings against honorable judges and create a flood of frivolous litigation; nor has the competence of the judiciary to deal with false or frivolous pleadings and to enforce the disciplinary rules of the Bar, gone into eclipse. For centuries the avenue of impeachment has been open to litigants so inclined to falsely attack honorable judges, and the process has not been abused. Neither will abuse result from the decision of the majority below.

E. Private persons will not be discouraged from seeking aid of the judicial process: Petitioner Dennis here argues (p. 15, Fifth) that private persons will be afraid to seek the aid of state courts, lest they be hauled into federal court, charged with a conspiracy. Such argument begs the question, and is no more valid than would be

an argument that the law of conspiracy alone should frighten strong men out of making contracts--lest the contract itself involve them in a charge of conspiracy. There is yet the matter of illegality, the bribe, the unlawful ex parte agreement between the judge and a litigant, etc.--the indispensable ingredient which is rarely present; but if present, relief should be available under Sec. 1983.

II.

THERE ARE CONFLICTS BETWEEN THE CIRCUITS AS TO LIABILITY UNDER 42 UNITED STATES CODE SECTION 1983 OF PRIVATE PERSONS WHO CONSPIRE WITH AN IMMUNE STATE JUDGE, BUT SUCH CONFLICT MAY BE RESOLVED BY DENYING THE PETITION FOR CERTIORARI; OR IF GRANTED, BY AFFIRMING THE COURT BELOW ON THE ISSUE OF DERIVATIVE IMMUNITY.

A. Precedents relied on by Petitioner do not factually apply: The appellate courts have not heretofore had before them a fact situation where the judge in question had accepted a bribe for which he had agreed in advance to perform a corrupt judicial act. The implication that a judge is immune no matter how corrupt his acts may be, is dicta. The issue of actual, proven corruption is here presented.

The majority below observed first that to permit private persons to derive immunity from a judge holds out "the actual incentive to corruption" by "its promise of civil immunity to those who succeed in involving a judge's powers in their nefarious schemes," (Dennis App., p. A17; S-L App., p. 9a) and concluded that such concept of conspiracy law "is sustained by neither reason nor author-

ity." (Dennis App., p.A19-20; S-L App., p. 11a)

B. Need for a Federal forum is imperative: The founding fathers foresaw the emergence of corrupt political machines which would dominate local areas, and saw in the U. S. Constitution relief for those oppressed thereby. Section 1983 is only a legislative implementation of the Constitution as the protector of the individual (even a minority of one) in his basic rights against governmental harassment.

The Federalist Papers note that in cases of local tyrannies, relief must come from higher echelons of government. See Madison, Federalist Paper, nos. 10, 43, and 51; Hamilton in Federalist Paper no. 60. Jefferson stated his fears of tyranny of local majorities:

> I suspect that the doctrine that small States alone are fitted to be republics, will be exploded by experience, with some other brilliant fallacies accredited by Montesquieu and other political writers. Perhaps it will be found, that to obtain a just republic (and it is to secure our just rights that we resort to government at all) it must be so extensive that local egoisms may never reach its greater part; in its councils free from particular interests, and giving, therefore, an uniform prevalence to the principles of justice. The smaller the societies, the more violent and more convulsive their schisms. (Emphasis ours). (John Dewey, The Living Thoughts of Thomas Jefferson, page 59)

Alexis de Toqueville writing on "Democracy in America" in 1834, shared Jefferson's fears of an unrestrained local, or for that matter, national majority:

> If ever the free institutions of America are destroyed, that event may be attributed to the omnipotence of the majority, which may at some future time urge the minorities to desperation and oblige them to have recourse to physical force. Anarchy will then be the result, but it will have been brought about by despotism.

1. Judicial corruption in Duval County is deep seated and of long standing: This case cannot be understood separate and apart from the sordid history of the corrupt dictatorship which has dominated Duval County, Texas for the past several decades. Appeals by the harassed minority for help from the state level have resulted only in pillow fight support, with the exception of judicial reforms which flowed from the exposure and impeachment of Judge Carrillo. It is a maxim of democracy that a local dictatorship may be established only if there be a secret alliance with the judge. A quarter century ago one district judge for Duval County was removed by the Texas Supreme Court for corruption, but the order removing him specifically authorized him to run for the same office at the next election. In Re Laughlin,

District Judge, Tex. S. Ct., 265 SW2d 805.[1] Although the judge was again elected without difficulty, the lessons learned from removal created impediments, and the bosses needed a judge who was "one of them." The Texas Legislature accommodated them by creation of the 229th Judicial District composed only of Duval and Starr Counties (historically subservient to the machine) and Jim Hogg County, so sparsely settled as to have no electoral impact (Acts of 61st Legislature, 1969 at p. 697, Ch. 239, Sec. 3, effective Sept. 1,

---

[1]Judge Laughlin did run for election at the next election and continued to serve as Judge of the 79th District Court, which included Duval and Starr Counties, as well as other more populous counties. He still serves as Judge of the 79th District, although Duval and Starr Counties were removed from the 79th and placed in the newly created 229th Judicial District by legislative act in 1969. (V.A.T.S., Art. 199, Sec. 229).

1969; no V.A.T.S., Art. 199, Sec. 229).[2] Who better could serve as judge of this newly created court than O. P. Carrillo, who, with his father, one brother and some 17 others, was convicted in Federal Court for fraud of political subdivisions in Duval County, Texas, in violation of 18 U.S.C., Sec. 1841? The conspiracy was carried out in the early 1950's. (Parr v. U.S., 5th Cir. 1959, 265 F2d 894) The convictions were overturned by the U. S. Supreme Court not on grounds that the thefts had not been committed, but that the case stretched the mail fraud statutes too far. (Parr, et al v. U.S., S. Ct. 1960, 363 U.S. 370, 4 L.ed.2d 1277, 80 S. Ct. 1171)

---

[2]This act was passed by Texas Legislature presided over by a Speaker who with other officials was convicted of bribery in connectionwith the Sharpstown scandals, the Texas Watergate. (Mutscher v. State, Ct. of Crim. App. of Texas, 1974, 514 SW2d 905).

Justices Frankfurter, Harlan and Stewart dissented.

O. P. Carrillo was elected Judge of the 229th District Court in November 1970 and took office January 1, 1971. The state judge appointed to hear the disqualification matter found that the transactions between Manges and Judge Carrillo amounted to a gift (bribery under Texas Constitution Art. XVI, Sec. 41; see finding S-L App., p. 61a-64a), for which reason the judge was disqualified as of February 1, 1971, exactly one month after his term began (S-L App., p. 65a-66a).

2. State reforms, though helpful, are not adequate: Following Judge Carrillo's disqualification, a falling out between the political bosses projected his fate into an impeachment proceeding in the Texas Legislature, and a removal proceeding by the Texas Judicial Qualification Commission. The Texas

Judicial Qualification Commission was obviously "dragging its feet" to force the Texas Senate to act because only the Senate could remove a judge and bar his again holding office. (See In Re: Laughlin, above) The Senate did convict and bar the Judge from again holding judicial office. The Commission then brought its complaint before the Texas Supreme Court, and the Judge was again removed. The history is reviewed in In re: O. P. Carrillo, District Judge, Tex. S. Ct. 1976, 542 SW2d 105. The next session of the Legislature submitted to the voters, and the voters approved, a constitutional amendment empowering the Supreme Court to bar from again holding judicial office a judge removed for corruption in proceedings initiated by the Commission. (Texas Constitution, Art. V,

Sec. 1a) These reforms are salutary and helpful, and indicate a wholesome movement at the state level away from the former ho-hum attitude that "if the people of Duval County elect corrupt officials, they are only getting what they deserve." Such attitude ignores the concept of a government of laws, and that our Constitution protects the rights of a minority of one.

3. Sparks-Lynd are not first to seek a Federal forum: The harassed taxpayers in Duval County, in the late 1950's, finding local law enforcement impotent, sought the aid of the U. S. Attorney and the Federal Courts to stop thefts from local political subdivisions, as reflected by Parr, et al v. U.S. (cited above). Although fraud on the political subdivisions was judicially determined in Federal Court, no effort was made at

the county, district or state level to recover the stolen funds. Humble Oil & Refining Company, as late as the 1970's, passed over the Justice of Peace Court in Duval County, to file ejectment in Federal Court to remove from the very land here involved, the principal defendant here, Clinton Manges. Why? Winslow, et al, v. Duval County Ranch Co., Inc., Tex. Civ. App. 1975, 519 SW2d 217 at p. 225; or S-L App., p. 80a). In thus seeking a federal forum, Sparks-Lynd have made an election based on judgment obviously shared by the U. S. Department of Justice and the Legal Department of one of the nation's largest corporations.

4. The option of a Federal forum is indispensable: The plaintiff has the option of selecting the forum in which to try his case. The pressures of cost and convenience

all favor the local forum. The very purpose of Section 1983 was to provide an option to select a federal forum in those cases where, due to conspiracy, an individual's constitutional rights would be denied in the local forum. That Judge Carrillo has been convicted and removed from office is in the public interest, but such does not restore Plaintiffs' property unlawfully taken; nor does it insure that Plaintiffs could now get a fair trial in Duval County. We are here dealing with a stubborn situation, where a dictatorship has existed for more than a quarter of a century. Hitler's dictatorship in Germany lasted only 12 years, and we still have an army of occupation in Germany to insure that the population does not return to dictatorship and facism. Removal of a dictator does not remove the danger of dictatorship or corruption.

5. The problem is national as well as local: That the Court may appraise the political danger to the area's inhabitants, to Texas, and to the United States, of a failure to deal realistically with the problem involved, we attach hereto as an Appendix a copy of that part of the map of Texas which shows outlined the three counties comprising the 229th Judicial District. Despite certain press infatuation with the idea that a new, strong and benevolent "Duke of Duval" will emerge from the power vacuum, the more likely prospect is that the new dictatorship will be a home grown mafia, fueled by the drug traffic.

Given the approximate 50 miles frontage of Starr County on the Rio Grande and three counties deep (about 126 miles, stretching almost to San Antonio) and you have a "no

man's land" too large to police. Considering historical judicial subservience, once the drug traffic controls the judge, the cancer cannot be contained. It will affect the entire nation. Speculation, at least, connects the drug traffic with the assassination of U. S. District Judge John Wood of San Antonio. It is a geographical fact, however, that these three counties constitute a direct escape route from San Antonio into Mexico. No real clues have been turned up relating to Judge Wood's assassination, and any speculation beyond the escape route being available, would be wild indeed; but not more so than the speculation that the majority decision below will release a flood of false and frivolous suits against honorable judges.

III.

CONCLUSION

The Court of Appeals correctly held that

private persons who conspire with and corrupt a state judge are liable to suit under 42 United States Code Section 1983, and the petition for certiorari should be denied; or if granted, the en banc decision of the Fifth Circuit should be affirmed as to such private parties. As to Judge O. P. Carrillo, he should be denied immunity as contended in Cause Number 79-1239.

Respectfully submitted,

SIDNEY SPARKS and R. L. LYND, d/b/a SIDNEY SPARKS, TRUSTEE, Respondents

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing "Reply of Respondents to Petition of Orville E. Dennis for Writ of Certiorari" have been deposited with the United States Postal Service, with proper first-class postage affixed thereto, certified mail, return receipt requested, addressed to each of the parties or their counsel of record in the court below, as follows:

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Mailed the 22nd day of February, 1980.

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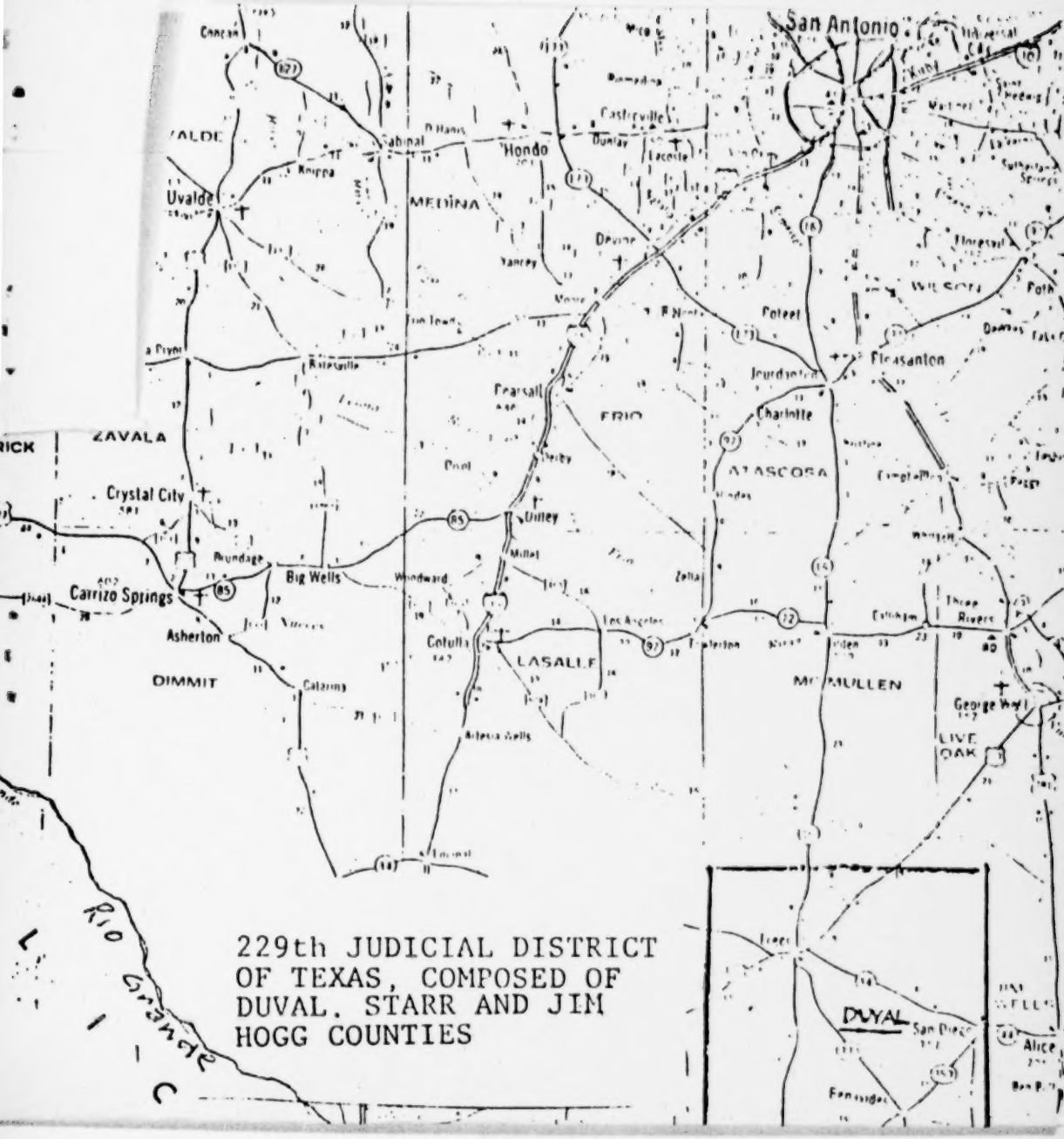

229th JUDICIAL DISTRICT OF TEXAS, COMPOSED OF DUVAL, STARR AND JIM HOGG COUNTIES

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